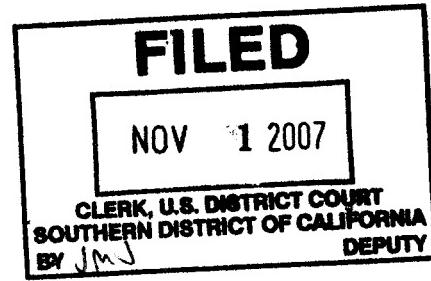


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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

10 07cr2960-JAH
11 UNITED STATES OF AMERICA,) Magistrate Case No. 07MJ2423
12 Plaintiff,)
13 v.)
14 OSCAR DANIEL JIMENEZ-PENA (2),)
15 Defendant.)
16 _____)

**STIPULATION OF FACT AND JOINT
MOTION FOR RELEASE OF
MATERIAL WITNESS(ES) AND
ORDER THEREON**

(Pre-Indictment Fast-Track Program)

17 **IT IS HEREBY STIPULATED AND AGREED** between the plaintiff, UNITED STATES
18 OF AMERICA, by and through its counsel, Karen P. Hewitt, United States Attorney, and
19 Carla J. Bressler, Assistant United States Attorney, and defendant OSCAR DANIEL JIMENEZ-
20 PENA, by and through and with the advice and consent of defense counsel, Martin G. Molina, that:

21 1. Defendant agrees to execute this stipulation on or before the first preliminary hearing
22 date and to participate in a full and complete inquiry by the Court into whether defendant knowingly,
23 intelligently and voluntarily entered into it. Defendant agrees further to waive indictment and plead
24 guilty to the pre-indictment information charging defendant with a non-mandatory minimum count
25 of Transportation of Aliens and Aiding and Abetting, in violation of 8 U.S.C. §1324(a)(1)(A)(ii)
26 and (v)(II).

27 //

28 CJB:es:10/15/07

1 2. Defendant acknowledges receipt of a plea agreement in this case and agrees to
2 provide the signed, original plea agreement to the Government not later than five business days
3 before the disposition date set by the Court.

4 3. Defendant agrees to plead guilty to the charge pursuant to the plea agreement on or
5 before **November 14, 2007**.

6 4. The material witnesses, Abraham Acevedo Del Villar and Gabriel Aguilar-Gonzalez,
7 in this case:

8 a. Are aliens with no lawful right to enter or remain in the United States;
9 b. Entered or attempted to enter the United States illegally on or about
10 October 9, 2007;

11 c. Were found in a vehicle driven by codefendant in or near San Diego,
12 California and that defendant knew or acted in reckless disregard of the fact that they were aliens
13 with no lawful right to enter or remain in the United States;

14 d. Were paying or having others pay on their behalf \$1,800 - \$2,800 to others
15 to be brought into the United States illegally and/or transported illegally to their destination therein;
16 and,

17 e. May be released and remanded immediately to the Department of Homeland
18 Security for return to their country of origin.

19 5. After the material witnesses are ordered released by the Court pursuant to this
20 stipulation and joint motion, if defendant does not plead guilty to the charge set forth above, for any
21 reason, or thereafter withdraws his guilty plea to that charge, defendant agrees that in any
22 proceeding, including, but not limited to, motion hearings, trial, sentencing, appeal or collateral
23 attack, that:

24 a. The stipulated facts set forth in paragraph 4 above shall be admitted as
25 substantive evidence;

26 b. The United States may elicit hearsay testimony from arresting agents
27 regarding any statements made by the material witness(es) provided in discovery, and such

1 testimony shall be admitted as substantive evidence under Fed. R. Evid. 804(b)(3) as statements
 2 against interest of (an) unavailable witness(es); and,

3 c. Understanding that under Crawford v. Washington, 124 S. Ct. 1354 (2004),
 4 “testimonial” hearsay statements are not admissible against a defendant unless defendant confronted
 5 and cross-examined the witness(es) who made the “testimonial” hearsay statements, defendant
 6 waives the right to confront and cross-examine the material witness(es) in this case.

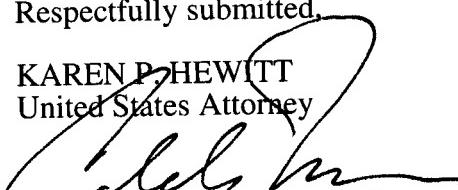
7 6. By signing this stipulation and joint motion, defendant certifies that defendant has
 8 read it (or that it has been read to defendant in defendant's native language). Defendant certifies
 9 further that defendant has discussed the terms of this stipulation and joint motion with defense
 10 counsel and fully understands its meaning and effect.

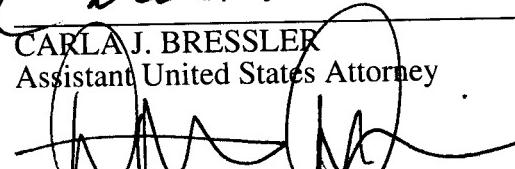
11 Based on the foregoing, the parties jointly move the stipulation into evidence and for the
 12 immediate release and remand of the above-named material witness(es) to the Department of
 13 Homeland Security for return to their country of origin.

14 It is STIPULATED AND AGREED this date.

15 Respectfully submitted,

16 KAREN P. HEWITT
United States Attorney

17 
CARLA J. BRESSLER
Assistant United States Attorney

18 
MARTIN G. MOLINA
Defense Counsel for Jimenez-Pena

19 
OSCAR DANIEL JIMENEZ-PENA
Defendant

20 Dated: 11/19/07.

21 Dated: 10/19/07.

22 Dated: 10/19/07.

23 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Oscar Daniel Jimenez-Pena (2)

ORDER

Upon joint application and motion of the parties, and for good cause shown,
THE STIPULATION is admitted into evidence, and,
IT IS ORDERED that the above-named material witness(es) be released and remanded
forthwith to the Department of Homeland Security for return to their country of origin.

SO ORDERED.

Dated: 11/1/07



28 Stipulation of Fact and Joint Motion for Release of
Material Witness(es) And Order Thereon in
United States v. Oscar Daniel Jimenez-Pena (2)